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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, SAL CATALDO,
 JULIAN SANTIAGO, and SUSAN LYNN
 HARVEY, individually and on behalf of all other
 similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No.: 3:20-cv-4688-RS

**PLAINTIFFS' OPPOSITION TO
 GOOGLE'S MOTION *IN LIMINE*
 NUMBER 9 TO EXCLUDE EVIDENCE
 AND TESTIMONY RE: EMOTIONAL
 DISTRESS**

Judge: Hon. Richard Seeborg
 Date: July 30, 2025
 Time: 9:30 a.m.

1 **I. INTRODUCTION**

2 With this Motion, Google does not identify specific testimony from any deposition that it
 3 seeks to exclude at trial, or any portion of any expert report or document. Google instead seeks to
 4 broadly exclude unspecified “testimony and argument relating to Plaintiffs’ alleged emotional
 5 distress damages.” Mot. at 2. This does not make sense. As Google knows, Plaintiffs are not
 6 presenting a damages model based on emotional distress. Plaintiffs’ damages models are based on
 7 the money Google made (unjust enrichment based on Google’s profits) and the money Google never
 8 paid (compensatory damages based on Screenwise). Nominal damages also do not require the type
 9 of modeling disputed by Google.

10 In this respect, Google’s Motion is misplaced. Of course, to the extent Google’s goal with
 11 this Motion is to more broadly prevent the class representatives from testifying about the harm
 12 caused by Google’s conduct, or to otherwise prevent Plaintiffs from eliciting testimony and
 13 presenting argument regarding the harm caused by Google’s conduct, or offensiveness, that is also
 14 improper. Plaintiffs will present testimony and other evidence regarding how Google’s conduct
 15 harmed Plaintiffs and class members in various ways, including by intruding on their privacy, taking
 16 their data without permission or consent, and using that data for Google’s benefit without any
 17 compensation to Plaintiffs and class members. Plaintiffs do not see any of that testimony or evidence
 18 as “emotional distress damages” or evidence that would in any way stray beyond the prior orders of
 19 this Court and what is allowable in a class action.

20 Regardless, all of this is something that can readily be addressed at trial. Google’s Motion
 21 should be denied as unnecessary in terms of any damages model based on emotional distress (there
 22 is none) and otherwise improper.

23 **II. ARGUMENT**

24 *First*, Google’s Motion should be denied because it does not address anything that is actually
 25 in dispute or at issue for trial. Plaintiffs are rightfully suspicious because Google cites no specific
 26 evidence that it seeks to exclude. Instead, it seeks to broadly exclude “testimony and argument
 27 relating to Plaintiffs’ alleged emotional distress damages.” Mot. at 2. Plaintiffs are not presenting a
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1 damages model based on emotional distress, so this makes no sense. Plaintiffs will of course seek
 2 nominal damages for all of their claims, where this Court confirmed in its certification decision that
 3 nominal damages may be awarded on a classwide basis. Dkt. 445 at 13. But that is not a basis to limit
 4 any evidence or argument at trial.

5 **Second**, to the extent Google seeks to constrain the evidence and argument regarding the harm
 6 caused by Google’s conduct, that is also a basis to deny this Motion. Harm is of course relevant. For
 7 example, the “highly offensive” inquiry for the invasion of privacy claims considers “the likelihood
 8 of serious harm to the victim” and “the degree and setting of the intrusion.” *In re Facebook, Inc.*
 9 *Internet Tracking Litig.*, 956 F.3d 589, 606 (9th Cir. 2020). The jury should be able to consider
 10 testimony regarding the harm caused by Google when weighing the offensiveness of Google’s
 11 conduct. Google can address that testimony through cross examination.

12 **Third**, Google’s Rule 403 arguments also do not provide any support for its Motion. Plaintiffs
 13 will not be introducing a new damages model, so there is no prejudice in that respect. Google will not
 14 need to shift any defense strategy, and the jurors will not be misled or confused regarding the
 15 calculation of damages. Nominal damages do not require any such calculations. Testimony regarding
 16 the harm caused by Google’s conduct is highly relevant and cannot possibly be excluded under Rule
 17 403.

18 **Fourth**, there are no class certification problems. Plaintiffs will appear and testify in their
 19 capacity as class representatives, as appointed by the Court to serve in that role. The focus at trial will
 20 be on common proof addressing common questions, including common proof regarding how Google
 21 presented (s)WAA as a privacy control that would stop Google from saving app activity, but Google
 22 then proceeded to collect, save, and use that (s)WAA-off app activity for its own enrichment without
 23 ever paying users. Plaintiffs intend to proceed in a manner that is fully consistent with Rule 23’s
 24 requirements and the prior submissions at the class certification and summary judgment stages, none
 25 of which improperly raised any individualized issues. In *Vasquez v. Leprino Foods Company*, the
 26 court considered and rejected a similar argument. 2023 WL 2167245, at *3 (E.D. Cal. Feb. 22, 2023).
 27 There, the defendants argued that the witness testimony would be overly individualized such that
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“jurors will not be able to extrapolate these class member witnesses’ claims to the entire class.” *Id.* The court found that unpersuasive, writing that the “argument ultimately goes to the weight of the witnesses’ testimonies, not their admissibility.” *Id.* The potential “numerous mini-trials” Google references are just the routine practice of attacking testimony through cross examination and contrary evidence at trial. Google is free to do so.

III. CONCLUSION

Plaintiffs respectfully ask that the Court deny Google’s Motion *in Limine* No. 9.

Dated: July 10, 2025

Respectfully submitted,

By: /s/ Mark C. Mao

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